

ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
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PAUL NEWMAN
BRENDA BURNS



ARIZONA CORPORATION COMMISSION

Executive Director
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DATE: APRIL 23, 2012
DOCKET NO.: T-20805A-11-0221

ARIZONA CORPORATION COMMISSION
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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harping. The recommendation has been filed in the form of an Opinion and Order on:

HYPERCUBE TELECOM, LLC
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 2, 2012

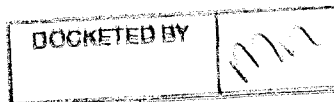
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 10, 2012

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

APR 23 2012



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 HYPERCUBE TELECOM, LLC FOR APPROVAL
10 OF A CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE RESOLD AND
12 FACILITIES-BASED LOCAL EXCHANGE AND
13 LONG DISTANCE TELECOMMUNICATIONS
14 SERVICES.

DOCKET NO. T-20805A-11-0221

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 8, 2012

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring

13 APPEARANCES: Mr. Michael W. Patten, ROSKA DEWULF &
14 PATTEN, PLC, on behalf of Hypercube Telecom, LLC;
15 and

16 Mr. Scott Hesla, Staff Attorney, Legal Division, on
17 behalf of the Utilities Division of the Arizona
18 Corporation Commission.

18 **BY THE COMMISSION:**

19 This case concerns an application filed with the Arizona Corporation Commission
20 ("Commission") by Hypercube Telecom, LLC ("Hypercube") requesting a Certificate of
21 Convenience and Necessity ("CC&N") to provide resold and facilities-based local exchange and long
22 distance telecommunications services in Arizona.

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Commission finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. On May 31, 2011, Hypercube filed with the Commission an application for a CC&N
28 authorizing Hypercube to provide resold and facilities-based local exchange and resold and facilities-

1 based long distance telecommunications services in a service area including the entire State of
2 Arizona. Hypercube requested to have its services classified as competitive.

3 2. On October 24, 2011, Hypercube filed responses to the first set of data requests issued
4 by the Commission's Utilities Division ("Staff"), along with Hypercube's initial proposed local,
5 interexchange, and access tariffs.¹

6 3. On December 1, 2011, Hypercube filed revised proposed local, interexchange, and
7 access tariffs.

8 4. On December 2, 2011, Hypercube filed a Protective Agreement that had been
9 executed on November 30, 2011, by counsel for Staff and a consultant for Hypercube.

10 5. On December 22, 2011, Staff filed a Staff Report in this matter, recommending
11 approval of Hypercube's application with conditions.

12 6. On January 9, 2012, a Procedural Order was issued scheduling a hearing in this matter
13 for March 8, 2012, and establishing other procedural requirements and deadlines.

14 7. On January 10, 2012, Hypercube filed an appearance of local counsel.

15 8. On February 2, 2012, Hypercube filed updated information related to a transfer of
16 ownership of Hypercube and its parent company.

17 9. On February 17, 2012, Hypercube filed an affidavit of publication showing that notice
18 of its application and the hearing had been published in *The Arizona Republic* on February 3, 2012.

19 10. On March 8, 2012, a full evidentiary hearing in this matter was held before a duly
20 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,
21 Arizona. Hypercube and Staff appeared through counsel and provided evidence in the form of
22 testimony and exhibits. Hypercube provided the testimony of Robert W. McCausland, Senior Vice
23 President of Regulatory and Government Affairs. Staff provided the testimony of Armando Fimbres,
24 Public Utility Analyst V for Staff. No members of the public attended to provide comment.

25 11. On March 26, 2012, Hypercube filed notice that acquisition of its parent company by
26 West Corporation had been completed on March 26, 2012.²

27
28 ¹ Staff's data request was not docketed.

² Official notice is taken of this document filed after the hearing, which shall be referenced herein as LFE A-6.

1 **Fitness and Properness to Obtain a CC&N**

2 12. Hypercube is a foreign limited liability company organized under the laws of
3 Delaware. (Ex. A-1.) Hypercube has been authorized to transact business in the State of Arizona
4 since February 6, 2001,³ and is in good standing with the Commission's Corporations Division. (*Id.*)

5 13. Hypercube is a Competitive Local Exchange Carrier ("CLEC") that provides services
6 to other carriers for voice traffic, with one of its primary services being competitive tandem services
7 for voice calls that traverse networks of different telecommunications companies. (Tr. at 8.)
8 Hypercube has begun introducing services in the area of Voice over Internet Protocol ("VOIP")
9 trunking for outbound calls and Direct Inward Dial ("DID") for inbound calls. (*Id.*) The VOIP and
10 DID services are provided mainly to unify communications companies and other carriers. (*Id.* at 8-
11 9.) The DID services are currently provided in several jurisdictions, including Texas and one or two
12 other states, and Hypercube intends to expand that offering to business customers in other states. (*Id.*
13 at 13.) Hypercube intends to offer local exchange services directly to end users in Arizona, primarily
14 for business customers. (*Id.* at 9, 11.) Hypercube does not intend to market its services to residential
15 customers, but would provide residential customers the same service offerings available to business
16 customers. (*See id.* at 14.) Hypercube is not currently providing traditional dial tone services in any
17 jurisdiction. (*Id.*)

18 14. Hypercube is a wholly owned subsidiary of Hypercube, LLC ("Hypercube Parent"),
19 which has recently been acquired by West Corporation ("West").⁴ (Ex. A-1; Ex. A-4.) Through its
20 subsidiaries, West primarily provides non-regulated services, including conferencing and other
21 meeting replacement services, alerts and notification services, emergency communications services,
22

23 ³ Hypercube originally obtained authorization to transact business in Arizona under its previous name, KMC Data,
24 LLC.

25 ⁴ In March 2012, Hypercube Parent was acquired by West through a transaction involving the purchase by Rubik
26 Acquisition Company, LLC ("Rubik"), a wholly owned subsidiary of West, of all membership interests in Hypercube
27 Parent. (Ex. A-4; LFE A-6.) Rubik acquired those membership interests directly from the individuals or entities holding
28 the interests, except for a 26.06 percent interest held by Annex Holdings HC Corporation ("Annex"), which retained its
membership interests, had all of its equity acquired by Rubik, and became a wholly owned subsidiary of Rubik after the
transaction closed. (*See* Ex. A-4.) At the time of the hearing in this matter, Hypercube, Hypercube Parent, and Rubik had
received Federal Communications Commission ("FCC") approval of the transfer of control of Hypercube and Hypercube
Parent to Rubik, for both domestic and international purposes. (Tr. at 7.) Hart-Scott-Rodino Act approval had also been
obtained, as had approval for all jurisdictions except Virginia and California. (*Id.*) Staff testified that the transaction did
not require approval from the Commission. (Tr. at 22-23.)

1 automated call processing, interconnected VOIP services, and agent-based services such as inbound
2 customer care, in the U.S. and other regions of North America as well as Europe and Asia. (Ex. A-4.)

3 15. Hypercube's management team was not expected to change as a result of Hypercube
4 Parent's acquisition by West. (Ex. A-4; Tr. at 16.) At the time of the CC&N application and hearing,
5 Hypercube was governed by three officers: Ronald Beaumont, President and Chief Executive
6 Officer, who has more than 30 years of experience in different aspects of telecommunications and
7 management; George Clay Myers, Chief Financial Officer, who has more than 25 years of
8 progressive accounting and finance experience in technology and telecommunications companies;
9 and Douglas L. Davis, Chief Technical Officer, who has more than 25 years of technical, business,
10 and operations management experience in the telecommunications industry. (Ex. A-1; Ex. A-2.)

11 16. Hypercube currently is certified to provide local exchange service in 12 states and the
12 District of Columbia, is certified to provide long distance service in 31 states, and has not had its
13 local exchange or long distance authority withdrawn or discontinued in any state.⁵ (Ex. A-2.)

14 17. Hypercube has been involved in billing disputes with other telecommunications
15 companies that have resulted in formal complaints. (See Ex. A-1; Tr. at 11-12.) Since January 1,
16 2005, Hypercube has filed eight state-level formal complaints against other telecommunications
17 companies related to access charge billing disputes: complaints against DeltaCom in Alabama,
18 Florida, Georgia, and Tennessee, and complaints against Level 3 Communications ("Level 3") in
19 California, New York, and Texas. (Ex. A-2.) Level 3 filed complaints against Hypercube as well, in
20 California and with the FCC. (Tr. at 11-12.) Hypercube tries to achieve amicable resolution of such
21 disputes. (*Id.* at 13.) At the time of hearing, Hypercube had entered into a settlement agreement with
22 Level 3 and expected, within the next 30 to 45 days, for a joint withdrawal of complaints to be filed
23 in California and for Level 3 to complete its withdrawal of the FCC complaint it filed against
24 Hypercube. (*Id.* at 10-11.) Several years ago, when Mr. McCausland joined Hypercube, there were
25 two complaints regarding switched access billing, which have since been resolved. (*Id.* at 12.) Mr.

26
27 ⁵ But see Findings of Fact Nos. 19 and 20 regarding KMC Data's Arizona CC&N. In addition, as of October 2011,
28 Hypercube had withdrawn its Colorado tariff for local exchange service, without relinquishing its authority and with the
intention of resubmitting the tariff in the future when it is ready to offer local exchange services in Colorado. (Ex. A-2.)

1 McCausland testified that he does not believe that there have been any consumer complaints filed
2 against Hypercube. (*Id.*)

3 18. Hypercube stated in its application that none of its officers, directors, partners, or
4 managers had been involved in any civil or criminal investigation; had had judgment entered in any
5 civil matter; had had judgment levied by any administrative or regulatory agency; or had been
6 convicted of any criminal acts within the last 10 years. (Ex. A-1.) Hypercube later clarified that it
7 had been involved in a civil lawsuit filed by it against Comtel Telecom Assets LP in the U.S. District
8 Court for the Northern District of Texas, which it did not reveal in its application because it did not
9 appear to be responsive, as the lawsuit did not involve a civil or criminal investigation, and no
10 judgment or conviction was entered. (Ex. A-2.) The case involved an access-related dispute and was
11 settled and withdrawn. (*Id.*)

12 19. Prior to a name change in June 2008, Hypercube was known as KMC Data, LLC
13 ("KMC Data").⁶ (Ex. S-1.) KMC Data was granted a CC&N to provide telecommunications
14 services in Arizona in Decision No. 65125 (August 23, 2002) and had its CC&N revoked by the
15 Commission in Decision No. 69967 (October 30, 2007)⁷ because KMC Data had failed to file
16 conforming tariffs or proof of a performance bond within one year of the CC&N decision, as required
17 by Decision No. 65125. (Ex. S-1; Decision No. 69967.) At the time the CC&N was revoked, KMC
18 Data had not commenced providing services in Arizona. (Decision No. 69967.)

19 20. The management personnel responsible for KMC Data's compliance with Decision
20 No. 65125 have been completely replaced by the current Hypercube management team, and
21 Hypercube asserts that it is committed to full compliance with future Commission decisions. (Ex. S-
22 1.) Mr. McCausland testified that he takes regulatory compliance very seriously, that he has never
23 had a noncompliance like that in his more than 30 years of experience in telecommunications, and
24 that he absolutely and emphatically assures the Commission that such noncompliance will not occur.
25 (Tr. at 18-19.)

26 ...

27 ⁶ Official notice is taken of the name change documentation filed with the Commission's Corporations Division and
28 available through the Commission's STARPAS database.

⁷ Official notice is taken of these decisions.

1 21. Mr. Fimbres testified that Hypercube is a fit and proper entity to receive a CC&N to
2 provide services in Arizona. (Tr. at 23.) Mr. Fimbres also testified that Staff had not found any
3 adverse information concerning West. (*Id.* at 23-24.)

4 **Technical Capabilities**

5 22. Based on Hypercube's operations in numerous jurisdictions and the more than 80
6 years of cumulative experience among its top executives, Staff determined that Hypercube possesses
7 the technical capabilities to provide the services for which it is requesting CC&N authority. (Ex. S-1.)

8 **Financial Resources**

9 23. Hypercube intends to rely on the financial resources of Hypercube Parent in initiating
10 service in Arizona. (Ex. A-1; Ex. S-1.)

11 24. Pursuant to a protective agreement with Staff, Hypercube provided unaudited
12 financials for calendar years 2009 and 2010. (Ex. S-1.) For 2010, Hypercube Parent reported total
13 assets of \$20,980,812; members equity of \$8,536,821; and net income of \$17,050,421. (*Id.*)

14 25. Mr. Fimbres testified that Hypercube is the best funded company for which he has
15 analyzed a CC&N application and that Staff would be pleased to see Hypercube compete
16 aggressively in Arizona. (Tr. at 23.) Mr. Fimbres further testified that West is also very well funded.
17 (*Id.*)

18 26. Based on the financial information provided pursuant to the protective agreement,
19 Staff determined that Hypercube has the financial capability to provide the services for which it has
20 requested CC&N authority. (Ex. S-1.)

21 **Competitive Services/Proposed Rates**

22 27. Hypercube has requested that the services to be provided under its CC&N be classified
23 as competitive. (Ex. A-1.)

24 28. Hypercube will be entering a local exchange market in which incumbent local
25 exchange carriers ("ILECs") hold a virtual monopoly and CLECs are already providing services; in
26 which ILECS have the ability to offer the same services that Hypercube intends to offer; in which
27 many CLECs and local exchange resellers also offer services substantially similar to those Hypercube
28 intends to offer; and in which a new entrant like Hypercube must compete with existing carriers to

1 obtain customers in areas that already have service and may have to convince developers to allow it
2 to provide service in areas that do not yet have service. (Ex. S-1.) New entrants like Hypercube must
3 depend upon ILECs to terminate traffic to customers, to provide essential local exchange service
4 elements until the new entrant's own network has been built, and for interconnection. (*Id.*)
5 Hypercube will not have the capability to adversely affect prices for local exchange services or to
6 restrict output to the detriment of telephone service subscribers. (*Id.*)

7 29. The interexchange market that Hypercube will be entering is one in which numerous
8 facilities-based and resold interexchange carriers have been authorized to provide service throughout
9 the state, with large facilities-based interexchange carriers (AT&T, Sprint, MCI, etc.) holding a
10 majority of the interLATA interexchange market and ILECs holding a large portion of the
11 intraLATA interexchange market. (Ex. S-1.) Hypercube will need to compete with those companies
12 to obtain customers. (*Id.*) The interexchange market is one with numerous competitors and limited
13 barriers to entry, in which established interexchange carriers have existing relationships with their
14 customers that a new entrant would need to overcome to compete, and in which Hypercube will not
15 have the capability to adversely affect prices or restrict output to the detriment of telephone service
16 subscribers. (*Id.*)

17 30. Staff recommended that Hypercube's proposed services be classified as competitive
18 and asserted that the competitive process should result in rates that are just and reasonable. (Ex. S-1.)

19 31. Hypercube projects that its Arizona jurisdictional assets used to provide
20 telecommunications services to Arizona customers at the end of its first 12 months of operations will
21 have a net book value or fair value rate base ("FVRB") of \$0. (Ex. A-1.) While Staff considered
22 Hypercube's FVRB information, Staff determined that it should not be given substantial weight in the
23 analysis of Hypercube's rates. (Ex. S-1.)

24 32. Although Hypercube does not intend immediately to install facilities within Arizona, it
25 may deploy a switch in Arizona if it has sufficient success in the market for intercarrier switching of
26 voice traffic. (Tr. at 14.) Hypercube has requested facilities-based CC&N authority at this time so
27 that it can install such facilities if and when it determines that they are warranted. (*See id.* at 14-15.)
28

1 33. Hypercube estimated its revenue for the first 12 months of operations in Arizona to be
2 approximately \$661,000 and its operating expenses during the same time period to be approximately
3 \$548,630. (Ex. A-1.)

4 34. Staff reviewed the rates in Hypercube's proposed tariffs and determined that they are
5 comparable to the rates charged by CLECs, ILECs, and major long distance carriers operating in the
6 State of Arizona. (Ex. S-1.)

7 **Performance Bond/Irrevocable Sight Draft Letter of Credit**

8 35. Staff determined that Hypercube's proposed tariffs include terms and conditions for
9 advance payments to be required for services and asserted that any advances, deposits, and/or
10 prepayments collected by Hypercube should be protected by a performance bond or an irrevocable
11 sight draft letter of credit ("ISDLOC"). (Ex. S-1.)

12 36. Mr. McCausland testified that Hypercube had used a prototype tariff that included
13 such language and that he intended to reexamine the tariff prior to establishing service, to ensure that
14 the tariff properly reflects that Hypercube will not be accepting deposits. (Tr. at 15.) Mr.
15 McCausland also testified, however, that Hypercube is willing to obtain a performance
16 bond/ISDLOC. (*Id.* at 9-10.)

17 37. The Commission's current performance bond/ ISDLOC requirements are \$10,000 for
18 resold long distance (for a provider that collects advances, deposits, or prepayments from customers);
19 \$25,000 for resold local exchange; \$100,000 for facilities-based long distance; and \$100,000 for
20 facilities-based local exchange. (Ex. S-1.) The amount of the recommended performance
21 bond/ISDLOC for a provider seeking to provide multiple services is an aggregate of the amount
22 normally imposed for each type of service. (*Id.*) In this case, the minimum recommended
23 performance bond/ISDLOC amount would be \$235,000. (*Id.*)

24 **Regulatory Requirements**

25 38. A.A.C. R14-2-1308(A) requires a local exchange carrier to make local number
26 portability available to facilitate the ability of a customer to switch between authorized local carriers
27 within a given wire center without changing the customer's telephone number and without
28 impairment of quality, functionality, reliability, or convenience of use.

39. A.A.C. R14-2-1204(A) requires all telecommunications service providers that interconnect to the public switched network to provide funding for the Arizona Universal Service Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers that begin providing basic local exchange service after April 26, 1996, to pay AUSF charges as provided under A.A.C. R14-2-1204(B)(1) and those that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C. R14-2-1204(B)(2). A.A.C. R14-2-1204(B)(3)(b) requires all other telecommunications service providers that interconnect to the public switched network and begin providing telecommunications service after April 26, 1996, to make written elections as to how they will be categorized for purposes of AUSF assessments.

40. Commission rules require a provider to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be lower than the total service long-run incremental cost of providing the service. Any change to a provider's effective price for a service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in a provider's tariff must comply with A.A.C. R14-2-1110.

41. A.A.C. R14-2-1201(6)(d) requires that basic local exchange telephone service include access to emergency services, including but not limited to emergency 911. In its application, Hypercube certified that, in accordance with A.A.C. R14-2-1201(6)(d) and 47 C.F.R. §§ 64.3001 and 64.3002,⁸ it will provide all customers with 911 and E911 services, where available, and will coordinate with ILECs and emergency service providers to provide 911 and E911 services. (Ex. A-1.)

42. A.A.C. R14-2-1901 *et seq.* establish requirements to protect Arizona consumers from unauthorized carrier changes ("slamming") and apply to each public service corporation providing telecommunications services within the State of Arizona and over which the Commission has jurisdiction.

43. A.A.C. R14-2-2001 *et seq.* establish requirements to protect Arizona consumers from unauthorized carrier charges ("cramming") and apply to each public service corporation providing

⁸ 47 C.F.R. § 64.3001 requires all telecommunications carriers to transmit all 911 calls to a public safety answering point ("PSAP"), to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in 47 C.F.R. § 64.3002.

1 telecommunications services within the State of Arizona and over which the Commission has
2 jurisdiction.

3 44. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file
4 an application for authorization with the Commission before it discontinues service; the rule also
5 establishes customer notice requirements and other requirements related to discontinuance of service.

6 **Staff's Recommendations**

7 45. Staff recommends approval of Hypercube's application to provide resold and
8 facilities-based local exchange and resold and facilities-based long distance telecommunications
9 services in Arizona and further recommends:

- 10 (a) That Hypercube be ordered to comply with all Commission rules, orders, and
11 other requirements relevant to the provision of intrastate telecommunications
12 services;
- 13 (b) That Hypercube be ordered to abide by the quality of service standards that
14 were approved for Qwest (formerly known as U.S. West) in Docket No.
15 01051B-93-0183 (Decision No. 59421), without application of the penalties
16 therein;
- 17 (c) That Hypercube be prohibited from barring access to alternative local
18 exchange service providers who wish to serve areas where Hypercube is the
19 only provider of local exchange service facilities;
- 20 (d) That Hypercube be required to notify the Commission immediately upon
21 changes to Hypercube's name, address, or telephone number;
- 22 (e) That Hypercube be ordered to cooperate with Commission investigations,
23 including but not limited to those regarding customer complaints;
- 24 (f) That Hypercube be ordered to offer Caller ID with the capability to toggle
25 between blocking and unblocking the transmission of the telephone number at
26 no charge;
- 27 (g) That Hypercube be ordered to offer Last Call Return service that will not
28 return calls to telephone numbers that have the privacy indicator activated;

1 (h) That Hypercube be authorized to discount its rates and service charges to the
2 marginal cost of providing the services; and

3 (i) That Hypercube's proposed services be classified as competitive.

4 46. Staff further recommends that Hypercube be ordered to comply with the following and
5 that its CC&N be rendered null and void, after due process, if it fails to do so:

6 (a) Hypercube shall, within 365 days from the date of an Order in this matter or 30
7 days prior to providing service, whichever comes first, docket a conforming
8 tariff for each service within its CC&N;

9 (b) Hypercube shall procure a performance bond or ISDLOC in the amount of
10 \$235,000, which minimum amount shall be increased, in increments of
11 \$117,500, when the total amount of the advances and/or deposits collected
12 from Hypercube's customers is within \$23,500 of the bond amount or
13 ISDLOC amount;

14 (c) Hypercube shall file the original performance bond or ISDLOC with the
15 Commission's Business Office and copies of the performance bond/ISDLOC
16 with Docket Control, as a compliance item in this docket, within 90 days of the
17 effective date of a Decision in this matter or within 10 days before service to
18 end user customers is commenced, whichever comes first;

19 (d) Hypercube shall maintain the original performance bond/ISDLOC in effect
20 until further Order of the Commission;

21 (e) Hypercube shall notify the Commission through a compliance filing in this
22 docket within 30 days of its commencement of service to end-user customers;
23 and

24 (f) Hypercube shall abide by Commission rules addressing Universal Service in
25 Arizona by making the necessary monthly payments required by A.A.C. R14-
26 2-1204.

27 47. Staff further recommends, as a condition for approval of Hypercube's CC&N
28 application, that Hypercube be required to provide local exchange service to end-users in Arizona

1 and, if Hypercube should fail to provide service directly to end-user customers, that Hypercube be
2 required to notify the Commission of this fact and to request cancellation of its CC&N through a
3 filing made in this docket. Staff did not include a time frame for this recommended condition for
4 approval. Because we find that it would be difficult to enforce this condition without a time frame,
5 and we find that this condition is reasonable and appropriate, we find that Hypercube shall provide
6 notice to the Commission and shall request cancellation of its CC&N granted herein if it has not
7 commenced providing local exchange services to end-user customers within three years following the
8 effective date of this Decision.

9 48. Staff further recommends, as a condition for approval of Hypercube's CC&N
10 application, that Hypercube be required to file, on April 15 of each year, for three years following a
11 Commission Decision granting a CC&N in this matter, a Complaint and Civil Action status report
12 providing a summary of Hypercube's involvement in complaints and civil actions in each jurisdiction
13 in which Hypercube operated during the preceding year. We find that this condition is reasonable
14 and appropriate, but that it should be modified so that the compliance dates are better aligned with the
15 effective date for this Decision. Thus, we find that Hypercube shall file each such report, as a
16 compliance item in this docket, on July 1, and shall provide therein a summary of Hypercube's
17 activity during the preceding May 1 through April 30, with the first report due on July 1, 2013, for
18 the period from May 1, 2012, through April 30, 2013, and subsequent reports due on July 1, 2014,
19 and July 1, 2015.

20 49. Mr. McCausland testified that Hypercube is willing to comply with all of Staff's
21 recommendations made in the Staff Report. (Tr. at 9-10.)

22 50. Staff recommends that the Commission draw on the performance bond/ISDLOC on
23 behalf of, and for the sole benefit of, Hypercube's customers if the Commission finds, in its
24 discretion, that Hypercube is in default of its obligations arising from its CC&N, and that the
25 Commission use the performance bond/ISDLOC funds, as appropriate, to protect Hypercube's
26 customers and the public interest and take any and all actions the Commission deems necessary, in its
27 discretion, including but not limited to returning prepayments or deposits collected from Hypercube's
28 customers.

51. Staff's recommendations in Findings of Fact Nos. 45 through 48, as modified herein, are reasonable, appropriate, and in the public interest and should be adopted.

CONCLUSIONS OF LAW

1. Upon receiving a CC&N, Hypercube will be a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Hypercube and the subject matter of the application.

3. Notice of Hypercube's application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes, it is in the public interest for Hypercube to provide the telecommunications services for which it has requested authorization in its application.

6. Hypercube is a fit and proper entity and has the technical capabilities and financial resources necessary to receive a CC&N to provide resold and facilities-based local exchange and resold and facilities-based long distance telecommunications services.

7. The telecommunications services that Hypercube desires to provide are competitive in Arizona.

8. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is just and reasonable and in the public interest for Hypercube to establish rates and charges for competitive services that are not less than Hypercube's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations set forth in Findings of Fact Nos. 45 through 48, as modified herein, are reasonable, appropriate, and in the public interest and should be adopted.

10. Hypercube's FVRB is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

11. Hypercube's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Hypercube Telecom, LLC for a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange and resold and facilities-based long distance telecommunications services in Arizona is hereby granted, conditioned upon compliance with Staff's recommendations set forth in Findings of Fact Nos. 45 through 48, as modified herein.

IT IS FURTHER ORDERED that if Hypercube Telecom, LLC fails to meet any of the conditions outlined in Findings of Fact Nos. 46 through 48, within the timeframes therein, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: HYPERCUBE TELECOM, LLC

2 DOCKET NO.: T-20805A-11-0221

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